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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,997	12/24/2003	Yukio Nihci	245553/USOCONT	9427

22850

7590

08/03/2009

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EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 08/03/2009

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10743997	12/24/2003	NIHEI ET AL.	245553USOCONT

## EXAMINER

SHIRLEY V. GEMBEH

ART UNIT	PAPER
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1618

20090722

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

## Commissioner for Patents

All pending claims submitted on 6/9/09 now relate to methods of increasing the lethal dose of (Z)-N-[2-methoxy-5-[2-(3,4,5-trimethoxyphenyl)vinyl]phenyl]-L-serinamide to twice or more, reducing the toxicity at the pharmaceutically effective dosage of (Z)-N-[2-methoxy-5-[2-(3,4,5-trimethoxyphenyl)vinyl]phenyl]-L-serinamide, reducing gastrointestinal toxicity at the pharmaceutically effective dosage of (Z)-N-[2-methoxy-5-[2-(3,4,5-trimethoxyphenyl)vinyl]phenyl]-L-serinamide, reducing hepatic toxicity at the pharmaceutically effective dosage of (Z)-N-[2-methoxy-5-[2-(3,4,5-trimethoxyphenyl)vinyl]phenyl]-L-serinamide, and/or reducing cardiovascular toxicity at the pharmaceutically effective dosage of (Z)-N-[2-methoxy-5-[2-(3,4,5-trimethoxyphenyl)vinyl]phenyl]-L-serinamide,.....

The original election on 10/4/04 was to Group I which was drawn to an anti-tumor agent comprising one or more tubulin polymerization-inhibitory active substances having anti-tumor activity and one or more anti-inflammatory active substances. In Paper No.20060815 the previously withdrawn method claims of Group II were rejoined with the elected products of Group I, based on the rejoinder procedure held in In re Ochiai (Fed. Cir. 1995) and in accordance with 37 CFR 1.104. See MPEP § 804.01.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement as set forth in the Office action mailed on 9/3/04 is hereby withdrawn. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See In re Ziegler, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971).

Currently submitted claims 39-42 and 50-64 on 6/9/09 are now directed to inventions that are independent or distinct from the invention originally presented (i.e., anti-tumor agents and treating tumors) for the following reasons: inventions reducing toxicity of AC 7700 require different method steps and goals and therefore are distinct from methods of treating tumors, as originally presented in Group II and because they require different search parameters that would create an undue burden on the Examiner.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 39-42 and 50-64 are now withdrawn from consideration as being directed to non-elected inventions. See 37 CFR 1.142(b) and MPEP § 821.03.

Because all claims are now directed to non-elected inventions, no claims are currently pending and the response filed 6/9/09 becomes non-responsive.

A shortened statutory period for response to this action is set to expire 30 days from the date of this letter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHIRLEY V. GEMBEH whose telephone number is (571)272-8504.

/S.V.G./ Examiner  
Art Unit 1618

/Robert C. Hayes/  
Primary Examiner, Art Unit 1649